



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2016-0132; FRL-9945-09-Region 6]

Approval and Promulgation of Implementation Plans; State of Louisiana; Revisions to the State Implementation Plan; Fee Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking a direct final action to approve revisions to the Louisiana State Implementation Plan (SIP) related to the Fee Regulations section of the Louisiana SIP that were submitted by the State of Louisiana on February 23, 2016. The EPA has evaluated the SIP submittal from Louisiana and determined these revisions are consistent with the requirements of the Clean Air Act (Act or CAA). The EPA is approving this action under section 110 of the Act.

DATES: This rule is effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless the EPA receives relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comment, the EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2016-0132, at <http://www.regulations.gov> or via email to donaldson.tracie@epa.gov. Follow the online

instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Tracie Donaldson, 214-665-6633, donaldson.tracie@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Tracie Donaldson, 214-665-6633, donaldson.tracie@epa.gov. To inspect the hard copy materials, please schedule an appointment with Tracie Donaldson or Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

A. CAA and SIPs

Section 110 of the CAA requires States to develop and submit to the EPA a SIP to ensure that State air quality meets National Ambient Air Quality Standards. These ambient standards currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA approved SIP regulations and control strategies are federally enforceable.

B. SIP Revision Submitted on February 23, 2016

The EPA first approved the Louisiana fee regulations into the Louisiana SIP on March 8, 1989. *See* 54 FR 09795. Since that date, the Louisiana fee regulations have been revised numerous times, but the SIP itself has not been updated. In order to address the gap between the SIP-approved fee regulations and the existing State fee regulations, the Louisiana Department of Environment Quality (LDEQ) submitted a revision to the Louisiana SIP in a letter dated February 23, 2016 that included regulations revised from 9/20/1988 through 4/20/2011; this submittal replaces the current SIP-approved permit fee program provisions found in Chapters 2 and 65 and replaces them with the current provisions included in the submittal for Chapter 2 which relate to the State's air program. In particular, the LDEQ submitted revisions for the inclusion of Louisiana Administrative Code (LAC) 33:III Sections 201 – 221 into the Louisiana SIP, with the exception of LAC 33:III.211(B)(15) which applies solely to fees for title V permitting. The submitted sections provide the state's authority to assess, collect and enforce the permitting fee program.

II. The EPA's Evaluation

As detailed in the Technical Support Document (TSD) accompanying this action, the LDEQ submitted a proposed SIP revision to the title I fee regulations requesting a repeal of the current SIP-approved permit fee program and replacement with the submitted proposed revisions for revised fee regulations containing a new fee schedule and associated provisions specific to the State's air program. Sections 201 through 221 of Chapter 2 establish the state's authority to assess, collect and enforce a fee permitting program to adequately fund air pollution permitting activities in Louisiana. The EPA has reviewed the submitted revisions and determined that the submitted revised fee program is consistent with the general requirements at CAA section 110(a)(2)(E)(i) to provide necessary assurances that the State will have adequate funding to carry out the provisions of the Louisiana SIP as it pertains to major and minor source Title I permitting, and with CAA section 110(a)(2)(L) that requires states to charge necessary fees for the development and implementation of major source Title I permits. The proposed revisions included in the February 23, 2016, SIP submittal more accurately represent the current fee structure than the previously approved SIP, which was approved by the EPA on March 8, 1989. Based on our evaluation of the fee assessment provisions submitted, we find the submitted repeal of Chapters 2 and 65 and replacement with Chapter 2 sections 201 through 221 [with the exception of LAC 33:III.211(B)(15)] establishing fee requirements for permits is consistent with sections 110(a)(2)(E)(i) and 110(a)(2)(L) of the CAA.

Under section 110(l) of the CAA, the EPA can only approve a revision to an implementation plan after it has been adopted by a State after reasonable notice and public hearing. The proposed SIP revision was published in the Louisiana Register on December 20, 2015. No request was made for a public hearing and no adverse comments were received by LDEQ. We find that the submitted revision satisfies the public notice requirements under section

110(l). Further under section 110(l), the EPA cannot approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment, maintenance and reasonable further progress. The LDEQ has submitted a repeal of the existing SIP-approved fee regulations that include a specific fee schedule with detailed dollar amounts for specified permitting activities. In place of the repealed regulations, the LDEQ has submitted regulations that enable the state to assess and collect fees sufficient to implement the title I permitting program. Title I does not require SIPs to include a specific fee schedule or dollar amount for permitting activities; the EPA also does not have a presumptive minimum that we believe is sufficient for implementing a title I program. Rather, our analysis of the approvability of a title I fee program is based on determining whether the state has the adequate legal authority to assess, collect and enforce the fees determined by the state as necessary for implementation and whether the state has the ability to revise these fees into the future in order to continue to implement the title I program. Our analysis indicates the submitted fee regulations provide the State of Louisiana with the necessary authority to assess, collect and enforce permitting fees sufficient to implement the title I permitting program. The proposed revisions are administrative in nature and will not affect emissions and will also not interfere with requirements of the CAA related to the proposed revisions. We propose to find that the submitted fee regulations to support this required program will further the state's air quality goals and will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

III. Final Action

For the reasons stated above and in the TSD, the EPA is taking direct final action to approve revisions to the Louisiana SIP pertaining to title I fees. Specifically, the EPA is

removing the current SIP-approved fee program in Chapters 2 and 65 and approving in its place the revised Louisiana fee program at Chapter 2 sections 201 through 221, and submitted as a revision to the Louisiana SIP on February 23, 2016.

The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if relevant adverse comments are received.

This rule will be effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** without further notice unless we receive relevant adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the Louisiana regulations as described in the Final Action section above. We

have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect

until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 6, 2016.

Ron Curry,
Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T - Louisiana

2. In §52.970, the table in paragraph (c) is amended by:

a. Adding entries for “Sections 201, 203, 205, 207, 209, 211, 213, 215, 217, 219, and 221”.

b. Removing the entry for “Section 223”, the center heading “Chapter 65 – Rules and Regulations for the Fee System of the Air Quality Control Programs” and the entries for “Sections 6501, 6503, 6505, 6507, 6509, 6511, 6513, 6515, 6517, 6519, 6521, and 6523”.

The additions read as follows:

§52.970 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
* * * * *	* * * * *			
Chapter 2 - Rules and Regulations for the Fee System of the Air Quality Control Programs				
Section 201	Scope and Purpose	10/20/1993	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	

Section 203	Authority	9/20/1988	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 205	Definitions	9/20/1988	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 207	Application Fees	2/20/2000	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 209	Annual Fees	2/20/2000	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 211	Methodology	4/20/2011	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	SIP does NOT include LAC 33:III.211.B.15.
Section 213	Determination of Fee	9/20/1988	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 215	Method of Payment	10/20/2009	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 217	Late Payment	3/20/1999	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
Section 219	Failure to Pay	3/20/1999	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	

Section 221	Effective Date	9/20/1988	[Insert date of publication in the Federal Register] [Insert Federal Register citation]	
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[FR Doc. 2016-09066 Filed: 4/20/2016 8:45 am; Publication Date: 4/21/2016]